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***Pro Hac Vice* Application Pending

*Proposed Attorneys for the Chapter 11
Debtors and Debtors in Possession*

**UNITED STATES BANKRUPTCY COURT
EASTERN DISTRICT OF WASHINGTON**

In re:

EASTERDAY RANCHES, INC., *et al.*

Debtors.¹

Chapter 11

Lead Case No. 21-00141
Jointly Administered

**DECLARATION OF T. SCOTT
AVILA IN SUPPORT OF MOTION
OF DEBTOR EASTERDAY
RANCHES, INC. FOR THE
ENTRY OF AN ORDER
AUTHORIZING AND
APPROVING THE TERM SHEET
WITH TYSON FRESH MEATS,
INC.**

¹ The Debtors along with their case numbers are as follows: Easterday Ranches, Inc. (21-00141) and Easterday Farms, a Washington general partnership (21-00176).

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MOTION FOR ORDER AUTHORIZING AND APPROVING
TERM SHEET – Page 1

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1 I, T. Scott Avila, declare under penalty of perjury that the following is true and
2 correct to the best of my knowledge, information, and belief:

3 1. I am a co-Chief Restructuring Officer of the above-captioned debtors and
4 debtors in possession (together, the “Debtors” or the “Company”). I am generally
5 familiar with the Company’s business and financial affairs, and books and records. I
6 am above 18 years of age and I am competent to testify.

7 2. I am authorized to submit this declaration on behalf of debtor Easterday
8 Ranches, Inc. (“Ranches”). Except as otherwise indicated, all facts set forth in this
9 declaration are based upon my personal knowledge of the Company’s operations and
10 finances, information learned from my review of relevant documents, and information
11 I have received from the Company’s advisors. If I were called upon to testify, I could
12 and would testify competently to the facts set forth herein on that basis.

13 3. I submit this declaration (the “Declaration”) in support of the *Motion of*
14 *Easterday Ranches, Inc. for the Entry of an Order Authorizing and Approving the*
15 *Term Sheet with Tyson Fresh Meats, Inc.* (the “Motion”). A capitalized term used but
16 not otherwise defined herein shall have the same meaning ascribed to it in the Motion.

17 4. Ranches and Tyson are parties to that certain *Cattle Feeding Agreement*,
18 dated February 20, 2017 (as subsequently amended or supplemented, the “Cattle
19 Feeding Agreement”), whereby Ranches is required to, among other things, purchase
20 and raise cattle on behalf of Tyson.

21 5. The Debtor and Tyson have engaged in negotiations concerning Tyson’s
22 ability to move certain cattle from Ranches’ feedlots to third party grow lots in
23 exchange for economic consideration necessary for the Debtor to appropriately care
24 for the cattle. These discussions have culminated in the execution of the binding
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DOCS_SF:105052.3 20375/002

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Term Sheet, subject to the approval of the court, the material terms of which are set forth below in summary form:

- i. Cattle. The parties estimate that there are approximately 52,000 cattle on Ranches' feedlots. Term Sheet at § 2.
- ii. Transfer Schedule. Approximately 12,000 cattle (the "Cattle") will be transferred from Ranches' feedlots to third party grow lots pursuant to the transfer schedule set forth on Exhibit A (the "Transfer Schedule") of the Term Sheet. The parties may agree in writing to modify the Transfer Schedule. Term Sheet at § 3.²
- iii. Initial Transfer. Commencing February 12, 2021 through February 17, 2021, Tyson will move approximately 3,336 Cattle from the Basin City Lot to a third party lot designated by Tyson and identified to Ranches. Term Sheet at § 6.
- iv. Post-Transfer Responsibility. Ranches will continue caring for and maintaining the Cattle on Ranches' feedlots and grow lots in the ordinary course of business consistent with past practices. Once Cattle are loaded onto trucks for transfer to locations designated by Tyson in accordance with the Transfer Schedule, Tyson will bear all risk of loss due to casualty, death, accident, weather, acts of God, or otherwise. All third party transportation costs are Tyson's responsibility, provided that Tyson reserve the right to assert such expenses as part of its prepetition claim against Ranches and Ranches, and its estate, reserve all reciprocal rights, including, but not limited to, challenging the reasonableness of such expenses. Term Sheet at § 7.
- v. Reservation of Rights. The transfer of Cattle is without prejudice to the rights and defenses of any party in interest, whether party to the Term Sheet or otherwise, regarding ownership of the Cattle, the value of the Cattle, or liens or set off rights that may be asserted with respect to the Cattle or the proceeds thereof. Term Sheet at § 8.

² Due to weather and road conditions, the parties may be required to alter the transfer schedule.

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1 vi. Tyson Advances. Attached as Exhibit B to the Term Sheet is a Tyson
2 Advance Request (the “Advance Request”). Tyson agrees to pay the
3 amounts set forth in the Advance Request as prepayments against
4 Tyson’s payment obligations arising postpetition under the Cattle
5 Feeding Agreement, as modified by the Term Sheet. Tyson
6 acknowledges and agrees that (a) the amounts set forth in the Advance
7 Request are the amounts for costs that will be due and payable under
8 the Cattle Feeding Agreement for the period by the Advance Request,
9 absent a change in the underlying assumptions respecting operations
10 at Ranches after the date of the Term Sheet; (b) Tyson will be
11 permitted to credit any advances against amounts due from Tyson to
12 Ranches under the Cattle Feeding Agreement, as modified by the
13 Term Sheet; (c) the “true-up” provisions at the section called
14 “Settlement and Return on Investment” in the Cattle Feeding
15 Agreement shall not be applied on a postpetition basis to the Cattle
16 transferred to Tyson by Ranches from February 1, 2021 through the
17 period covered by the Advance Request, or used to reduce amounts
18 due for such postpetition periods under the Cattle Feeding Agreement
19 as modified hereby, and (d) notwithstanding any subsequent rejection
20 or modification of the Cattle Feeding Agreement, Tyson will be
21 prohibited from taking a set off of the amounts funded in accordance
22 with the Advance Request against any prepetition amounts due to
23 Tyson. The Advance Request may be extended, amended, or
24 otherwise modified after the date of the Term Sheet upon the written
25 agreement of the parties thereto. Ranches will bill Tyson in the
26 ordinary course pursuant to the Cattle Feeding Agreement, for the
period from and after February 1, 2021, and the Tyson Funding and
other postpetition advances by Tyson will be applied by Ranches
against such postpetition billings. Term Sheet at § 10.

6. I believe that entry into the Term Sheet will provide needed funding to
the Debtor in order to satisfy the ongoing administrative burden on the Debtor’s estate
of feeding and caring for thousands of head of cattle. At the same time, the Term
Sheet will preserve all rights of the parties, including the Debtor’s estate, regarding
ownership of the cattle, the value of the cattle, or liens or set off rights that may be

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1 asserted with respect to the cattle or the proceeds thereof. Finally, I believe that the
2 Term Sheet creates an organized framework for the Debtor and Tyson to further scale
3 down the Debtor's operations – the costs of which will be borne by Tyson.

4 7. For the foregoing reasons, I believe that entry into the Term Sheet is a
5 sound exercise of the Debtor's business judgment and should be approved.

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1 I declare under penalty of perjury under the laws of the State of Washington
2 that the foregoing is true and correct.

3 DATED this 16th day of February 2021.

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6 T. Scott Avila

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